

1 Jack Silver, Esq. SB# 160575  
2 Jerry Bernhaut, Esq. SB# 206264  
3 Law Office of Jack Silver  
4 Post Office Box 5469  
5 Santa Rosa, CA 95402-5469  
6 Tel. (707) 528-8175  
7 Fax. (707) 528-8675  
8 Email: lhm28843@sbcglobal.net

9 Attorneys for Plaintiff  
10 NORTHERN CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER  
14 WATCH, a non-profit Corporation,

15 Plaintiff,

16 v.

17 CITY OF AMERICAN CANYON  
18 and DOES 1 -10, Inclusive,

19 Defendants  
20  
21  
22  
23  
24  
25  
26  
27  
28

CASE NO. 3:12-cv-04600 JSC

**CERTIFICATE OF SERVICE OF  
COMPLAINT ON UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY AND UNITED STATES  
DEPARTMENT OF JUSTICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is P.O. Box 14426, Santa Rosa, CA 95402. On the date set forth below, I served the following described document(s):

**COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean Water Act 33 U.S.C. § 1251 *et seq*)**

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

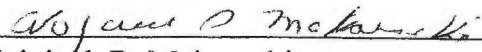
Citizen Suit Coordinator  
U.S. Dept. of Justice  
Environmental & Natural Resource Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on September 10, 2012 at Santa Rosa, California.

  
Wojciech P. Makowski

1 Jack Silver, Esq. SB # 160575  
2 Jerry Bernhaut, Esq. SB # 206264  
3 Law Office of Jack Silver  
4 Post Office Box 5469  
5 Santa Rosa, CA 95402-5469  
6 Tel. (707) 528-8175  
7 Fax. (707) 528-8675  
8 lhm28843@sbcglobal.net

9 Attorneys for Plaintiff  
10 NORTHERN CALIFORNIA RIVER WATCH,  
11 a non-profit Corporation

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 NORTHERN CALIFORNIA RIVER WATCH, a non-profit Corporation,

15 Plaintiff,

16 v.

17 CITY OF AMERICAN CANYON and  
18 DOES 1-10, Inclusive,

19 Defendants.

**COMPLAINT FOR INJUNCTIVE  
RELIEF, DECLARATORY RELIEF,  
CIVIL PENALTIES, RESTITUTION  
AND REMEDIATION  
(Environmental - Clean Water Act - 33  
U.S.C. § 1251, et seq)**

20 NOW COMES Plaintiff NORTHERN CALIFORNIA RIVER WATCH, a non-profit  
21 Corporation, ("RIVER WATCH") by and through its attorneys, and for its Complaint against  
22 Defendants CITY OF AMERICAN CANYON and DOES 1-10, Inclusive, ("DEFENDANT")  
23 states as follows:

24 **I. NATURE OF THE CASE**

25 1. This is a citizen's suit for relief brought by RIVER WATCH under the Federal Water  
26 Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*,  
27 specifically Section 505, 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to prohibit  
28 DEFENDANT from repeated and ongoing violations of the CWA. These violations are detailed  
in the Notice of Violations and Intent to File Suit dated May 1, 2012 ("CWA Notice") made part  
of this pleading and attached hereto as EXHIBIT A.

2. RIVER WATCH alleges DEFENDANT is routinely violating the CWA by violating the  
effluent discharge standards or limitations in the National Pollutant Discharge Elimination

1 System ("NPDES") Permit under which DEFENDANT'S sewage treatment and disposal facility  
2 and associated collection system are regulated.

3 3. DEFENDANT owns and operates the City of American Canyon Wastewater Treatment  
4 Facility located at 151 Mezzetta Court in American Canyon, Napa County, California (" the  
5 Facility") and its associated wastewater collection system. The Facility is regulated under State  
6 Water Resources Control Board Waste Discharge Order No. R2-2011-0046, NPDES Permit Co.  
7 CA0038768. The Facility discharges treated domestic, commercial and industrial waste from  
8 secondary treatment processes into North Slough, tributary of the Napa River, during the wet  
9 weather season, and to constructed freshwater wetlands year round, all waters of the United  
10 States.

11 4. The structural defects in DEFENDANT's collection system, which allow the inflow and  
12 infiltration of rain water and ground water ("I/I") into the sewer lines, result in a buildup of  
13 pressure which causes sewage system surface overflows ("SSOs"). Overflows caused by  
14 blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains  
15 which are connected to adjacent surface waters and North Slough – all waters of the United  
16 States. Numerous SSOs from DEFENDANT's collection system are documented in records on  
17 file with the Regional Water Quality Control Board ("RWQCB") and in the California Integrated  
18 Water Quality System reporting system, a number of which reached storm drains which  
19 discharge into waters of the United States, in violation of the discharge prohibitions in  
20 DEFENDANT' NPDES Permit. Each violation of a limit in a duly authorized NPDES permit  
21 is a violation of the CWA.

22 5. As recorded in California Integrated Water Quality System's Public SSO Reports,  
23 DEFENDANT' Facility and associated collection system has experienced eight (8) SSOs  
24 between June of 2007 and August 2011, with a combined volume of 44,900 gallons – a good  
25 portion of which reached surface waters. On June 8, 2007 there was a spill of reported volume  
26 of 3,300 gallons of untreated waste water from a City-owned sewer main at the intersection of  
27 Broadway and Cartagena, all 3,300 gallons of which discharged to a nearby surface water.

28 //

1 6. DEFENDANT's Facility has a history of non-compliance with the SSO reporting  
2 requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste  
3 Discharge Requirements Order No. 2006-0003-DWQ, governing the operation of sanitary  
4 sewer systems. DEFENDANT is a permittee under the Statewide Waste Discharge  
5 Requirements, which require that sewer system operators report SSOs to the California  
6 Integrated Water Quality System, and include in that reporting a credible estimate of the volume  
7 of any spill, the volume recovered and the volume which reached a surface water.  
8 DEFENDANT's field reports regularly indicate the SSO start time as the same time  
9 DEFENDANT was notified of the SSO, and usually notes the cleanup crew arriving just ten (10)  
10 minutes later. These equivalencies are highly unlikely and result in an under estimation of the  
11 duration of the spill. RIVER WATCH alleges DEFENDANT's common practice of  
12 underestimating the duration of the spill leads to underestimating the volume of the spill.  
13 DEFENDANT's SSO records generally do not indicate what method was used to estimate the  
14 total volume of the spill, which also calls into question the estimates of volume recovered and  
15 volume which reached a surface water, in violation of the CWA.

16 7. In addition to SSOs which discharge over land into surface waters, underground leakages  
17 ("exfiltration") caused by pipeline cracks and other structural defects in the collection system  
18 result in discharges to adjacent surface waters via underground hydrological connections.  
19 RIVER WATCH alleges that such discharges are continuous wherever ageing, damaged,  
20 structurally defective sewer lines in the collection system are located adjacent to surface waters,  
21 including North Slough, Walsh Creek, and American Canyon Creek. Surface waters and  
22 groundwater become contaminated with fecal coliform, exposing people to human pathogens.  
23 DEFENDANT's chronic Facility failures, resulting in discharges in violation of the CWA pose  
24 a substantial threat to public health.

25 8. RIVER WATCH alleges DEFENDANT is also routinely violating the RWQCB's Water  
26 Control Plan also known as the Basin Plan, Environmental Protection Agency ("EPA")  
27 regulations codified in the Code of Federal Regulations, and toxics standards promulgated by  
28

1 the State Water Resources Control Board in the course of DEFENDANT's operation of the  
2 Facility and associated collection system, as described in the CWA Notice.

3 9. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public  
4 participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

5 *Public participation in the development, revision, and enforcement of any*  
6 *regulation, standard, effluent limitation, plan or program established by the*  
7 *Administrator or any State under this chapter shall be provided for,*  
8 *encouraged, and assisted by the Administrator and the States.*

9 10. RIVER WATCH alleges DEFENDANT illegally discharges pollutants from the Facility  
10 and associated wastewater collection system to waters which are habitat for threatened or  
11 endangered species as that term is defined by both the California and United States EPA.

12 11. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,  
13 the imposition of civil penalties, and other relief for DEFENDANT's violations of the terms of  
14 its NPDES Permit and the CWA.

## 15 II. PARTIES

16 12. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit, public  
17 benefit corporation duly organized under the laws of the State of California, with headquarters  
18 and main office located in the City of Sebastopol, California. RIVER WATCH is dedicated to  
19 protect, enhance and help restore the surface and subsurface waters of Northern California. Its  
20 members live in Northern California including the City of American Canyon where the Facility  
21 and associated sewer collection system under DEFENDANT's ownership, operation and/or  
22 control are located.

23 13. Members of RIVER WATCH live nearby to waters affected by DEFENDANT's illegal  
24 discharges as alleged in this Complaint. Said members have interests in the watersheds  
25 identified in the CWA Notice and this Complaint, which interests are or may be adversely  
26 affected by DEFENDANT's alleged violations. Said members use the effected waters and  
27 effected watershed areas for domestic water, recreation, sports, fishing, swimming, hiking,  
28 photography, nature walks, religious, spiritual and shamanic practices, and the like. Furthermore,



1 the relief sought will redress the injury in fact, likelihood of future injury and interference with  
2 the interests of said members.

3 14. RIVER WATCH is informed and believes and on such information and belief alleges that  
4 Defendant CITY OF AMERICAN CANYON is a City formed under California Government  
5 Code § 34000 *et. seq.*, with administrative offices located at 4381 Broadway Street, Suite 201,  
6 American Canyon, California.

7 15. RIVER WATCH is informed and believes and on such information and belief alleges that  
8 Defendant DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and  
9 entities, who are, or were, responsible for, or in some way contributed to, the violations which  
10 are the subject of this Complaint or are, or were, responsible for the maintenance, supervision,  
11 management, operations, or insurance coverage of the Facility and sewage collection system  
12 which are the subject of this Complaint. The names, identities, capacities, and functions of  
13 Defendants DOES 1 - 10, Inclusive are presently unknown to RIVER WATCH, which shall seek  
14 leave of court to amend this Complaint to insert the true names of said DOES Defendants when  
15 the same have been ascertained.

### 16 III. JURISDICTIONAL ALLEGATIONS

17 16. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA,  
18 33 U.S.C. § 1365(a)(1), which states in part,

19 "any citizen may commence a civil action on his own behalf against any  
20 person . . . who is alleged to be in violation of (A) an effluent standard or  
21 limitation . . . or (B) an order issued by the Administrator or a State with  
22 respect to such a standard or limitation." For purposes of Section 505, "the  
term 'citizen' means a person or persons having an interest which is or may be  
adversely affected."

23 17. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods  
24 from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit  
25 from the waterways and associated natural resources into which DEFENDANT discharges  
26 pollutants as alleged in this Complaint, or by which DEFENDANT's operations adversely affect  
27 their interests, in violation of CWA § 301(a), [33 U.S.C. § 1311(a),] CWA § 505(a)(1), [33  
28 U.S.C. § 1365(a)(1)] and CWA § 402, [33 U.S.C. § 1342]. The health, economic, recreational,

1 aesthetic and environmental interests of RIVER WATCH and its members may be, have been,  
2 are being, and will continue to be adversely affected by DEFENDANT's unlawful violations as  
3 alleged herein. RIVER WATCH and its members contend there exists an injury in fact to them,  
4 causation of that injury by DEFENDANT's complained of conduct, and a likelihood that the  
5 requested relief will redress that injury.

6 18. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), notice of the  
7 CWA violations alleged in this Complaint was given more than sixty (60) days prior to  
8 commencement of this lawsuit, to: (a) DEFENDANT, (b) the United States EPA, Federal and  
9 Regional, and (c) the State of California Water Resources Control Board.

10 19. Pursuant to Section 505(c)(3) of the CWA, 33 U.S.C. § 1365(c)(3), a copy of this  
11 Complaint has been served on the United States Attorney General and the Administrator of the  
12 Federal EPA.

13 20. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in this  
14 District as the Facility and associated collection system under DEFENDANT's ownership,  
15 operation and/or control, and the watersheds and lands where illegal discharges occurred which  
16 are the source of the violations complained of in this action, are located within this District.

#### 17 IV. GENERAL ALLEGATIONS

18 RIVER WATCH incorporates by reference all the foregoing as though the same were  
19 separately set forth herein.

20 21. DEFENDANT provides sewerage service to a population of approximately 16,800. The  
21 Facility has design treatment capacities of 2.5 mgd average dry weather flow and 5.0 mgd peak  
22 wet weather flow design capacity. The collection system consists of approximately 31 miles of  
23 gravity sewer main, 2.5 miles of force main, and five pump stations. The Facility provides  
24 advanced secondary treatment of wastewater collected from its service area and discharges to  
25 North Slough, tributary of the Napa River, during the wet weather season and to constructed  
26 freshwater wetlands year round.

27 22. Structural defects in DEFENDANT's sewage collection system allow the inflow of  
28 rainwater and groundwater into sewer pipelines, which results in pressure creating SSOs of



1 untreated sewage to adjacent United States waters, as well as underground leakage of untreated  
2 sewage to adjacent United States waters.

3 23. RIVER WATCH alleges DEFENDANT regularly underestimates the volume and  
4 duration of SSOs and the volume of untreated sewage which reaches a surface water, in violation  
5 of the State Waste Discharge Requirements, which are incorporated into DEFENDANT's  
6 NPDES Permit. Any violation of a NPDES Permit is a violation of the CWA.

7 24. All illegal discharges and activities complained of herein occur in the waterways  
8 identified in this Complaint and in the CWA Notice, all of which are waters of the United States,  
9 as well as at the locations identified in detail in the CWA Notice.

10 25. The RWQCB has determined that the watershed areas and affected waterways identified  
11 in the CWA Notice and this Complaint are beneficially used for drinking water, water contact  
12 recreation, non-contact water recreation, fresh water habitat, wildlife habitat, preservation of rare  
13 and endangered species, fish migration, fish spawning, industrial service supply, navigation, and  
14 sport fishing.

#### 15 V. STATUTORY AND REGULATORY BACKGROUND

16 26. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants  
17 from a "point source" into the navigable waters of the United States, unless such discharge is in  
18 compliance with applicable effluent limitations as set by the EPA and the applicable State  
19 agency. These limits are to be incorporated into a NPDES permit for that point source  
20 specifically. The effluent discharge standards or limitations specified in a NPDES permit define  
21 the scope of the authorized exception to 33 U.S.C. § 1311(a), such that violation of a permit  
22 limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA.  
23 Additional sets of regulations are set forth in the Basin Plan, California Toxics Plan, the Code  
24 of Federal Regulations and other regulations promulgated by the EPA and the State Water  
25 Resources Control Board. Section 301(a) of the CWA prohibits discharges of pollutants or  
26 activities not authorized by, or in violation of an effluent standard or limitation or an order issued  
27 by the EPA or a State with respect to such a standard or limitation including a NPDES permit  
28 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Facility and wastewater

1 collection system piping and lines owned and operated by DEFENDANT are point sources under  
2 the CWA.

3 27. The affected waterways detailed in this Complaint and in the CWA Notice are navigable  
4 waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. §  
5 1362(7).

6 28. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits,  
7 subject to specified conditions and requirements, pursuant to Section 402 of the CWA, 33 U.S.C.  
8 § 1342.

9 29. The Facility is regulated under, Order No. R2-2011-0046, NPDES Permit  
10 No.CA0038768. RIVER WATCH alleges DEFENDANT has committed numerous violations  
11 of its NPDES Permit, as detailed in the CWA Notice attached hereto. All violations of a duly  
12 authorized NPDES Permit are a violation of the CWA.

#### 13 VI. DEFENDANT'S VIOLATIONS

14 RIVER WATCH incorporates by reference all the foregoing as though the same were  
15 separately set forth herein.

16 30. RIVER WATCH alleges that DEFENDANT's violations of Order No. R1-2011-0046,  
17 NPDES Permit No.CA0038768, as detailed in the CWA Notice, are violations of Section 301(a)  
18 of the CWA, 33 U.S.C. § 1311(a). The violations are established in RWQCB files for the  
19 Facility as well as in studies conducted by DEFENDANT in compliance with orders from  
20 regulatory agencies. The enumerated violations are detailed above and in the CWA Notice  
21 incorporated by reference herein designating the section of the CWA violated and describing the  
22 activity constituting a violation. (See CWA Notice, pg. 8-9).

23 31. The location of the discharges are the discharges points as described in the CWA Notice  
24 and in this Complaint.

25 //

26 //

27 //

28

**VII. CLAIM FOR RELIEF**

**Violation of CWA - 33 U.S.C. § 1251 *et seq.*, 33 U.S.C. §§ 1342 (a) and (b)  
and 33 U.S.C. § 1311**

**Discharge of Pollutants from Point Sources to United States Waters**

RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 31 above including the CWA Notice as though fully set forth herein. RIVER WATCH is informed and believes and based upon such information and belief alleges as follows:

32. DEFENDANT has violated and continues to violate the CWA as evidenced by the discharges of pollutants from a point source in violation of limits set forth and mandated in Order No. R2-2011-0046, NPDES Permit No. CA0038768, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

33. The violations of DEFENDANT as alleged in this Complaint are ongoing and will continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by DEFENDANT to the RWQCB or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary to address DEFENDANT's violations of the CWA which may occur at the Facility and sewage collection system after the filing of this Complaint. Each violation of a NPDES permit is a separate violation of the CWA.

34. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANT will continue to violate the CWA with respect to the enumerated discharges and releases as alleged herein. Further, that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect those members' interests which are or may be adversely affected by DEFENDANT's violations of the CWA as alleged herein.

//

//

**VIII. PRAYER FOR RELIEF**

RIVER WATCH prays this Court grant the following relief:

35. Declare DEFENDANT to have violated and to be in violation of the CWA;

36. Issue an injunction ordering DEFENDANT to immediately operate the Facility and associated sewage collection system in compliance with the CWA;

37. Order DEFENDANT to pay civil penalties on a per violation/per day basis for its violations of the CWA;

38. Order DEFENDANT to pay the reasonable attorneys' fees and costs of RIVER WATCH (including expert witness fees), as provided by 33 U.S.C. § 1365(d), and applicable California law; and,

39. For such other and further relief as the court deems just and proper.

DATED: August 30, 2012

  
JERRY BERNHAUT  
Attorney for Plaintiff  
NORTHERN CALIFORNIA RIVER WATCH

# **EXHIBIT A**



# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbeglobal.net



***Via Certified Mail -  
Return Receipt Requested***

May 1, 2012

Head of Agency/Head of Operations  
American Canyon Wastewater Treatment Plant  
Administrative Offices  
151 Mezzetta Court  
American Canyon, CA 94503

City Council  
City of American Canyon  
City Hall  
4381 Broadway Street, Suite 201  
American Canyon, CA 94503

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Head of Agency or Operations and City Council:

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

Northern California River Watch ("River Watch") hereby places the City of American Canyon, hereinafter referred to as "the Discharger" on notice, that following the expiration of 60 days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Permit issued under the CWA § 301(a), in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board

- San Francisco Bay Region, Region Water Quality Control Plan ("Basin Plan") as exemplified by violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permit.

## INTRODUCTION

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this NOTICE is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified in this NOTICE the NPDES Permit of the American Canyon Wastewater Treatment Plant and specifically identified the applicable permit standard, limitation or condition being violated. A violation of the NPDES Permit is a violation of the CWA.

2. *The activity alleged to constitute a violation.*

Most often, the NPDES Permit limitations being violated are self-explanatory and an examination of the language of the Permit is sufficient to inform the Discharger, especially since the Discharger is responsible for complying with that Permit condition. In addition, River Watch has set forth narratives in this NOTICE describing with particularity the activities leading to violations and has incorporated by reference the Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its NPDES Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations identified in this NOTICE are the City of American Canyon as owner and operator of the American Canyon Wastewater Treatment Plant, identified as the Discharger, and those of its employees responsible for compliance with the NPDES Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's Permit and also in records created and/or maintained by or for the Discharger which relate to the American Canyon Wastewater Treatment Plant and related activities as further described in this NOTICE.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB files and the Discharger's records with respect to the American Canyon Wastewater Treatment Plant for the period from May 1, 2007 through May 1, 2012. The range of dates covered by this NOTICE is from May 1, 2007 through May 1, 2012. River Watch will from time to time update this NOTICE to include all violations of the CWA by the Discharger which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous, and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this NOTICE is Northern California River Watch, referred to in this NOTICE as "River Watch." River Watch is a non-profit corporation dedicated to the

protection and enhancement of the waters of the State of California including all rivers, creeks, streams, and groundwater in Northern California. River Watch is organized under the laws of the State of California, and located at P.O. Box 817, Sebastopol, CA 95472. River Watch has retained legal counsel with respect to the violations set forth in this NOTICE. All communications should be addressed to:

Jack Silver, Esq.  
Law Offices of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel. 707-528-8175  
Fax. 707-528-8675

#### THE DISCHARGER'S OPERATION

The Discharger owns and operates the American Canyon Wastewater Treatment Plant (the "Plant"), and its associated wastewater collection system (the "Facility"). The discharge of treated wastewater from the Plant is regulated under Order No. R2-2011-0046, NPDES Permit Co. CA0038768. The Discharger provides sewerage service to a population of approximately 16,800. The Plant has design treatment capacities of 2.5 mgd average dry weather flow and 5.0 mgd peak wet weather flow design capacity. The Plant provides advanced secondary treatment of wastewater collected from its service area and discharges to North Slough, tributary of the Napa River, during the wet weather season and to constructed freshwater wetlands year round.

The Discharger's Facility consists of approximately 31 miles of gravity sewer main, 2.5 miles of force main, and five pump stations. Treated wastewater from the Plant is disinfected and either used as reclaimed water for irrigation or is discharged directly, or through constructed wetland ponds, to the North Slough.

The Discharger's ageing Facility has historically experienced high inflow and infiltration (I/I) during wet weather. The structural defects in the collection systems, which allow I/I into the sewer lines, result in a buildup of pressure which causes sewage system surface overflows (SSO). Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters and North Slough – all waters of the United States. As recorded in California Integrated Water Quality System's ("CIWQS") Public SSO Reports, the Facility has experienced 8 SSOs between June of 2007 and August 2011, with a combined volume of 44,900 gallons - a good many of which reached surface waters. On June 8, 2007 there was a spill of reported volume of 3,300 gallons of untreated waste water from a City owned

sewer main at the intersection of Broadway and Cartagena, all 3,300 gallons of which discharged to a nearby surface water.

The Discharger has a history of non-compliance with the SSO reporting requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements ("WDR") Order No. 2006-0003-DWQ, governing the operation of sanitary sewer systems. The Discharger is a permittee under the Statewide WDR which requires that sewer system operators report SSOs to the CIWQS, and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water.

The Discharger's field reports regularly indicate the SSO start time as the same time the Discharger was notified of the SSO, and usually notes the cleanup crew arriving just 10 minutes later. These equivalencies are highly unlikely and result in an under estimation of the duration of the spill. The Discharger's common practice of underestimating the duration of the spill leads to underestimating the volume of the spill. The Discharger's SSO records generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume which reached a surface water.

The Discharger also has had repeated difficulties with monthly and annual reporting, including frequent errors in sampling, reporting, and staff and equipment errors. These also call into question the integrity of the Discharger's estimates and reporting.

In addition to SSOs which discharge over land into surface waters, underground leakages ("exfiltration") caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage. River Watch alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the Discharger's Facility are located adjacent to surface waters, including North Slough, Walsh Creek, and American Canyon Creek. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger's chronic Facility failures pose a substantial threat to public health.

The discharges described herein constitute a nuisance, and are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal, or treatment of wastes.



The violations, established in Self Monitoring Reports, raw data and records of the RWQCB, and the CIWQS Public SSO Reporting Program Database records include, but are not limited to, the following categories in the NPDES Permit:

**Discharge Prohibitions**

**Violations**      **Description**

**1800**      **Collection system overflows caused by underground exfiltration** – an event in which untreated sewage is discharged from the Facility prior to reaching the Plant. Underground discharges are alleged to have been continuous throughout the 5 year period from May 1, 2007 through May 1, 2012.

(Order No. R2-2006-0036, Discharge Prohibitions III.E: “Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.”)

(Order No. R2-2011-0046, Discharge Prohibitions III.D: “Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.”)

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger’s own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the Plant reported in Self Monitoring Reports, video inspection of the Facility, and testing of waterways adjacent to sewer lines, creeks, and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination.

**8**      **SSOs**, as evidenced in the CIWQS Interactive Public SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

(Order No. R2-2006-0036, Discharge Prohibitions III.E: “Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.”)

(Order No. R2-2011-0046, Discharge Prohibitions III.D: "Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.")

### **Monitoring Requirements**

#### **Violations /Description**

Failure to monitor, report or adequately describe violations. The majority these violations occur due to failure to report violations of Discharge Prohibitions III.E of Order No. R2-2006-0036 , failure to report violations of Discharge Prohibitions III.D of Order No. R2-2011-0046, as well as failure to adequately describe reported violations of said provisions.

### **CONCLUSION**

The violations as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. The members' health, use and enjoyment of these natural resources is specifically impaired by the Discharger's violations of the CWA as set forth in this NOTICE.

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations alleged in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the Discharger wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 60-day notice period ends.

Very truly yours,

  
Jack Silver

JS:lhbm

cc: Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-100

William D. Ross  
City Attorney  
City of American Canyon  
Law Office of William D. Ross  
520 S. Grand Avenue, Suite 300  
Los Angeles, CA 90071

Judy Harvey, Attorney  
U.S. Department of Justice  
Environment and Natural Resource Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

**F**



U.S. POSTAGE  
**\$2.90**  
FCM LG ENV  
95404  
Date of sale  
09/10/12  
06 2500  
08259923  
APC  
FC0000500 103366

**USPS® FIRST-CLASS MAIL**

0 lb. 1

SHIP  
TO:

**WASHINGTON DC 20044**



**ZIP**



**(420) 20044**

**X-RAYED**

**SEP 12 2012**

**DOJ MAILROOM**